

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TCSP No. 194/230-232/NCLT/MB/MAH/2017
TCSP No. 195/230-232/NCLT/MB/MAH/2017

Under section 391 to 394 of the Companies Act,
1956 and 230-232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation

CCL Projects Private Limited
.... Petitioner / Transferor Company

CCL Optoelectronics Private Limited
.... Petitioner/ Transferee Company

Judgement delivered on: 02.11.2017

Coram:

B. S. V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

For the Petitioner :

Adv. Sanjay Udeshi and Adv. Darshan Ashar and Adv. Akshay Udeshi, i/b.
Sanjay Udeshi & Co., Advocates for the Petitioners

For the Regional Director :

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director.

Per: V. Nallasenapathy, Member (Technical)

ORDER:

1. Heard learned counsel for parties. The sanction of this Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and relevant provisions of section 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of CCL Projects Private Limited ("The Transferor Company") with CCL Optoelectronics Private Limited ("The Transferee Company") and their respective members and creditors ("Scheme of Amalgamation" / "Scheme")
2. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
3. The Learned Advocate appearing for the Petitioners states that the Petitions have been filed in consonance with the order passed in their

Company Summons for Direction No. 604 and 605 of 2016 before the Hon'ble High Court of Judicature at Bombay.

4. The Transferor Company is engaged in the business of manufacturers, installers, maintainers, designers, assemblers/Sub-assemblers, producers, purchasers, sellers, distributors, dealers, exporters, importers, indentors of all kinds of electronics and electrical equipment's and build, develop, provide technology, consulting services, EPC (Engineering, Procurement, Construction) Services, operation and maintenance services in the fields of power generation, transmission, distribution, conservation, solar energy, renewable energy, thermal power, wind power, hydro energy and other forms of power and energy and the Transferee Company is engaged in the business of manufacture, trade, import & export the electronic & optical components heat treatment preventives and other cleaning chemicals meeting various defense and aviation specifications and as buying agents, selling agents, commission agents, indenting agents, sub-agents, brokers, distributors and to act as manufacturer's representatives, importers, exporters of components and products. Transferor Company is wholly owned subsidiary of Transferee Company. It would therefore be advantageous to combine the activities i.e., market share, scale, efficiency, logistic and distribution network, combined employees base, reserves, investments, and other assets, manpower, finances, customers, creditors, mitigating competition, etc. and operations into a single Company for synergistic linkages besides the benefits of economies of scale. The amalgamation will enable the company to reduce the overheads and minimize the administrative and operative costs and also get the benefit of financial resources and managerial expertise and avoidance of duplication. This will be reflected in the profitability of the Company. The Transferor Company is engaged in the business of electronics and electrical equipments. The business activity carried out by the Transferor Company is in similar line of the Transferee Company and the same will help each other in the enhancement of business. The Transferor Company wishes to carry on its activities together with Transferee Company as they are in need of funds for carrying on its activities and hence, merge with the Transferee Company for financial assistance. Also the Transferor Company intends to reorganise and integrate its' operations with the activities of the Transferee Company as a part of group restructuring and hence it is proposed to merge Transferor Company into Transferee Company by way of amalgamation under this Scheme. The Amalgamated Company will have greater efficiency in overall

business including economies of scales, cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund investing and financing related activities and their growth opportunities in the businesses of the companies, to maximize shareholder value. Amalgamation will result in cost saving for both the Transferor Company and the Transferee Company as they are engaged in the related and interdependent activity which is expected to result in higher net worth for the Amalgamated Company and cost savings for the Amalgamated Company. The Amalgamated Company will be in position to have more efficient and more cost effective management system in view of consolidation of operations and larger size. Also the Transferee Company will be expanding its operations as the future opportunities in this line of business activity are very good. The Amalgamated Company would also have a larger networth base and greater borrowing capacity, which would provide it a competitive edge over others, especially in view of the increasing competition due to liberalization and globalization, which will be beneficial in more than one ways to both the Transferor Company and the Transferee Company and their shareholders and creditors, as both the Transferor Company and the Transferee Company plan to meet the competition in more effective way by combining their asset base and operations. The Board of Directors of the Transferor Company and the Transferee Company are of the opinion that the amalgamation would benefit the shareholders, employees and other stakeholders of the Transferor Company and the Transferee Company. The Board of Directors of the Transferor Company and the Transferee Company are of the opinion that the amalgamation would motivate employees by providing better opportunities to scale up their performance with a corporate entity having large product portfolio, large turnover, resources, asset base etc. which will provide impetus to corporate performance thereby enhancing overall shareholder value.

5. Petitioner Company has complied with all requirements as per directions of the Hon'ble Bombay High Court and this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
6. The Regional Director has filed his Report dated 3rd day of October, 2017 stating therein save and except as stated in para IV (a) to (e) it appears

that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph IV (a) to (e) of the said Report, the Regional Director has stated that :

- a. *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.,*
 - b. *As per the Definition Clause- (4) (c) of the scheme "Appointed Date" means 1st April, 2015 or such other date as may be fixed or approved by the High Court of Judicature at Bombay or the approved by the High Court of Judicature at Bombay or the Tribunal, as the case may be. In the regard, it is submitted in terms of the provisions 232 (6) of the Companies Act, 2013 it should be 1st April, 2015.*
 - c. *As per existing practice, the Petitioner Companies are required to serve Notice for the Scheme of Arrangement to the Income Tax Department for their comments. It appears that the company vide letter dated 11th April, 2017 has served a copy of company scheme application no.194 & 195 of 2017 along with relevant orders etc., further this Directorate has also issued a reminder 07.09.2017 to IT Department.*
 - d. *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
 - e. *M/s CCL Projects Private Limited the Transferee Company is a wholly owned subsidiary of M/s CCL Optoelectronics Private Limited (the Transferee Company). Hence, this Hon'ble Tribunal may kindly direct the companies involved in the scheme to file solvency certificate with the Register of Companies, Mumbai required u/s 233(1)(c) read with 233 (12) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.*
7. As far as the observations made in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies undertakes to pass such accounting entries which are necessary in connection with the scheme and also undertakes to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.
8. As far as the observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies states that the Appointed Date of the scheme shall be 1st April, 2015.

9. As far as the observations made in paragraph IV (c) and (d) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that, the copy of the Scheme is already served upon the Income Tax Department and till date no response is received from the Income Tax Department. The Transferee Company also undertakes to comply with all applicable provisions of Income Tax Act and all the Tax issues arising out of the scheme and the same will be met in accordance with law.
10. As far as the observations made in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that, the present petition is filed under sections 391 to 394 of the Companies Act, 1956 with relevant provisions applicable under sections 230 to 232 of the Companies Act, 2013 and therefore solvency certificate as required under section 233 of the Companies Act, 2013 is not applicable in the present case. The learned Advocate for the Petitioner Companies further submits that the scheme does not involve any arrangement with any of the creditors of the Petitioner Companies and their rights shall not be prejudiced pursuant to the scheme.
11. The Observations made by the Regional Director have been explained by the Petitioner Companies in paragraph 7 to 10 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
12. The Official Liquidator has filed his report dated 6th June, 2017 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner.
13. No objection has come before the Tribunal so far, to oppose the scheme.
14. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, do Order that.
15. Since all the requisite statutory compliance have been fulfilled Transfer Company Scheme Petition No. 194 and 195 is made absolute in terms of prayer clause (a).

16. The Petitioner Companies are directed to lodge a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy, within the prescribed time limits as prescribed under the Companies Act, 2013.
17. The Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.
18. Each Petitioner Companies to pay cost of Rs. 25,000/- (Rupees Twenty Five Thousand only) to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of this Order.
19. In Transfer Company Scheme Petition Nos. 194 of 2017 i.e. Transferor Company, to pay cost of Rs. 25,000/- (Rupees Twenty Five Thousand Only) to the Official Liquidator, High Court, Bombay to be paid within four weeks from the date of receipt of this Order.
20. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member
(Technical)

Sd/-

B.S.V. Prakash Kumar, Member
(Judicial)